



Informational Document

OBTAINING LEGAL RESIDENCE THROUGH CANCELLATION OF REMOVAL BY A NON-LAWFUL PERMANENT RESIDENT (42-B)

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What is cancellation of removal?

Cancellation of removal is an immigration remedy under which someone can apply for permanent residence in exceptional cases.

What are the requirements to receive cancellation of removal?

There are three requirements to win cancellation of removal. First, the applicant must have been present in the United States for ten continuous years. Second, the applicant must be a person of good moral character. Finally, the applicant must have a U.S. citizen or legal resident spouse, parent or child who would suffer exceptional and extremely unusual hardship if the applicant were deported.

How do you prove that you have lived ten years in the U.S.?

In order to win cancellation of removal, each applicant must prove residence in the U.S. for ten years. As many documents as possible should be submitted for each year. Letters from people who have known you normally do not help very much because the judge cannot be sure whether they are telling the truth.

The best types of documents are bills and receipts from the government or large, well-established companies. For example, electricity, gas, water, telephone, trash or cable bills, bank statements, paycheck stubs, and income tax returns are useful. The envelopes from letters you have received also are helpful. Therefore, it is very important that you not throw away any paper that can prove your stay in the U.S.

If more than one person from a family is applying for cancellation of removal, each person must prove that he or she has been present in the U.S. for the entire ten-year period. A common problem is that everything is in the husband's name, and the wife does not have anything in her name, even though she may have lived in the U.S. more than ten years. It is a good idea to have joint accounts or to put some accounts in the husband's name and other accounts in the wife's name.

What effect do absences from the U.S. have on a cancellation of removal case?

Brief departures normally do not break the time that someone has in the U.S. Normally, departures of less than two weeks do not cause problems. Absences of more than two weeks can cause problems and absences of more than 90 days automatically break residence. Continuous presence in the U.S. also is broken if the total of all departures during the previous ten years is more than 180 days.

Sometimes even brief departures can break the applicant's residence. For example, being deported always breaks the time that someone has in the U.S., even if the person returns immediately. In addition, if someone signs "voluntary departure" after being arrested by the INS, the departure always breaks residence. Also, if someone leaves the country to commit a crime, or after having been convicted of certain crimes, the departure breaks residence even if it was brief.

What is "good moral character"?

To win cancellation of removal, the applicant must prove that he or she has been a person of good moral character during the previous ten years. Certain crimes, as well as failing to file income tax returns or failing to pay child support, can show lack of good moral character. Also, helping people enter illegally into the U.S. or using false immigration documents can show bad moral character.

What constitutes "exceptional hardship"?

It is very difficult proving that someone will suffer exceptional and extremely unusual hardship. The law recognizes that anyone who is deported will suffer hardship. But this is not enough to win cancellation of removal. The applicant must show that the hardship will be much worse than a normal situation. In other words, it must be an extraordinary case. In addition, the law does not consider the hardship that the applicant will suffer, but rather only the hardship to applicant's U.S. citizen or legal resident spouse, parent, or child.

Family separation is one of the most important ways to show exceptional hardship. But an applicant will not win cancellation of removal simply by having relatives who are citizens or legal residents.

The judge will consider many factors. For example, how many relatives are in the applicant's home country, the age of the applicant's children, if the children speak English, and if the children have good grades.

If someone has a U.S. citizen or legal resident spouse, parent, or child who is in poor health or has some medical problem, it is possible that this will count as exceptional hardship. If the applicant can prove that the medical condition is serious and that the relative will not be able to receive adequate treatment in his or her home country, there is hope of winning.

In a cancellation of removal case the judge will consider all the positive and negative factors in your case. Positive factors include: community ties (such as involvement in a church, community organization or charity); having relatives in the U.S.; a lengthy residence in the U.S.; having learned English; and hardship to you if deported. Negative factors include: convictions or arrests; not paying taxes or child support; working with false documents; receiving welfare; and having many relatives in your country of origin.

Is it risky to apply for cancellation of removal?

Yes, it is very risky to apply for cancellation of removal because it can be requested only in a deportation case. In other words, you will have to turn yourself in to the INS and request

cancellation of removal from the judge. This is very risky because if the judge denies the case, you will have to leave the country. Therefore, generally it is not in someone's interest to turn himself or herself in to the INS to request cancellation of removal. If you believe you qualify for cancellation of removal, you should seek immediate legal assistance.

What can be done to make a cancellation of removal case stronger?

You can take various actions to improve your case if the INS should arrest you in the future. Specifically, if you belong to a church, we recommend that you become active in the church. Someday if you need to apply for cancellation of removal, it would help if the pastor could testify for you. Also, we recommend that you join community or cultural organizations. Being active in the community will help you show hardship.

We also recommend that you attend school and try to learn English or a trade. Judges like to see people who are trying to improve themselves. If you are working it is important that you pay your taxes and file a tax return each April.

Do not throw away any document, bill or receipt. These documents are very important to prove that you have lived in the U.S.

What should I do if the INS arrests me for being undocumented?

If the INS arrests you, do not sign voluntary departure. You should contact an attorney immediately. If you have more than ten years in the U.S., tell the INS agent that you want a hearing with an immigration judge. If you leave the country, you will lose the ten years you have accumulated in the U.S.